

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FERNANDO FONTANEZ,  
Plaintiff,  
v.  
FACEBOOK INC.,  
Defendant.

Case No. [21-cv-06920-RS](#)**ORDER**

In this closed action, plaintiff Fernando Fontanez made a number of unclear allegations against Facebook, Inc. regarding, among other things, “Identity Theft And Attempted Murder, Grand Larceny And Attempted Copyright Theft.” The gravamen of the complaint, however, appeared to be that Facebook disabled Fontanez’s account on the Facebook site, which Fontanez contends is a breach of contract that caused him damages.

The magistrate judge to whom this case was randomly assigned upon filing dismissed the initial complaint with leave to amend, finding it did not state a claim for breach of contract or any other cognizable claim. After Fontanez filed a First Amended Complaint, the magistrate judge issued a Report and Recommendation that it too be dismissed, because it still failed to allege facts that would support a breach of contract or any other claim. Fontanez was advised of his right to object to the Report and Recommendation no later than November 1, 2021. The matter was then randomly assigned to the undersigned for disposition.

On October 27, 2021, Fontanez filed a document labeled as a second amended complaint,

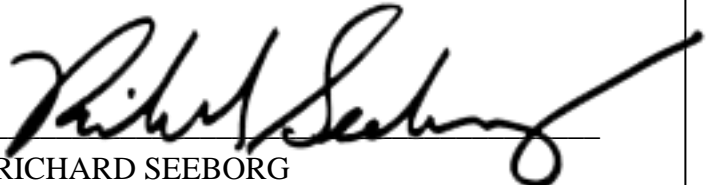
1 which included an assertion that he had cured the defect identified by the magistrate judge,  
2 because he “cites the four elements of breach of contract.” Fontanez did not obtain leave to file a  
3 second amended complaint.

4 On November 2, 2021, the Report and Recommendation was adopted, and the complaint  
5 was dismissed without leave to amend. The dismissal order expressly observed that the putative  
6 second amended complaint responded to the Report and Recommendation by asserting that it  
7 cured the defect identified by the magistrate judge. Accordingly, the order adopting the Report and  
8 Recommendation treated the putative second amended complaint as if it were an objection to the  
9 Report and Recommendation.

10 Plaintiff now request that the dismissal be set aside, arguing he did not understand  
11 objections to the Report and Recommendations were required. Plaintiff has shown no basis to set  
12 aside the dismissal. First, the Report and Recommendation expressly warned plaintiff that he “may  
13 file an objection no later than November 1, 2021.” Second, plaintiff in fact filed an objection as  
14 part of the assertions he made in his putative second amended complaint, and the court expressly  
15 considered that objection notwithstanding the label plaintiff attached to the document. Plaintiff has  
16 not suggested he has any other objection to offer other than his untenable arguments that have  
17 already been rejected. The “Motion To Relief From Judgement” is denied.

18  
19 **IT IS SO ORDERED.**

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21 Dated: December 10, 2021

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24 RICHARD SEEBORG  
25 Chief United States District Judge  
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